IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No.672/2007

Judgment delivered on: November 28 ,2007

National Insurance Company ..... Appellant
Through: Mr.Ram Ashray, Advocate.

versus

Shri Rajender Kumar & Ors. ..... Respondents
Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

KAILASH GAMBHIR, J. Oral:
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The present appeal is preferred against the award dated 18.8.2007 of the Motor Accident Claims Tribunal.

On 28.22.3005, Sh. Rajender Kumar was walking near G.T.K. Road by-pass. At about 6.00 a.m., an RTV bearing

registration No. DL 1VA 5294 being driven in a rash and negligent manner hit Sh. Rajender Kumar and as a result he fell down and became unconscious. He was taken to the hospital from the accident site, where he was declared as 'brought dead'. A claim petition was filed on 30.11.2005 and award was made on the said claim on 18.8.2007. Aggrieved with the said award, present appeal is preferred by the appellant insurance company.

The appellant in the present case has taken over the defence of the owner and driver of the offending vehicle as envisaged under Section 170 of the Motor Vehicles Act. The challenge to the impugned award is on the ground that the Tribunal has wrongly taken into consideration the income of the deceased boy on notional basis. The second contention raised by counsel for the appellant is that dependancy of the unmarried boy should have been taken 1/3rd instead of 2/3rd or at the most half. The third contention raised by counsel for the appellant is that wrong multiplier of 15 has been applied and excessive amount of Rs.15,000/- has been awarded towards funeral expenses has also been challenged.

I have heard learned counsel for the appellant and I do not find any merit in the contentions raised by counsel for the

appellant. The income of the deceased respondent has been claimed at Rs.5,000/- and since the same was not proved with the help of any evidence, therefore the Court has taken into consideration the minimum wages. This Court has time and again said that in the absence of any cogent evidence as to the income of the deceased the aid of Minimum Wages Act, should be taken. In this regard this Court in **Oriental Insurance Co. Ltd. Vs. Smt. Rajwati Devi,** observed as under:-

> "11. I agree with the contention advanced by the learned counsel for the insurance company. In absence of clear and cogent evidence pertaining to income of the deceased, learned Tribunal should have determined income of the deceased on the basis of minimum wages notified under the Minimum Wages Act. As the deceased was employed as a driver, I place him in the category of skilled labourers. Minimum wages for skilled labourers as on 1.2.1996 was Rs.2,101/- per month. (rounded off to Rs.2100/- per month). I adopt this figure as the monthly income of the deceased at the time of the accident."

It is, therefore, not a case where the deceased boy was not earning prior to the date of accident. The multiplier of 15 has been applied, taking into consideration the structured formula of IInd Schedule of the Motor Vehicles Act. After taking the mean of

age of the parents of the deceased, I do not find there is any infirmity in the findings of the Tribunal even on this aspect. In this regard the Supreme Court in **New India Assurance Co. Ltd. v. Kalpana, (2007) 3 SCC 538** has observed as under:-

> **"7.** The multiplier method involves the ascertainment of the loss of dependency or the multiplicand having regard to the circumstances of the case and capitalising the multiplicand by an appropriate multiplier. The choice of the multiplier is determined by the age of the deceased (or that of the claimants whichever is higher) and by the calculation as to what capital sum, if invested at a rate of interest appropriate to a stable economy, would yield the multiplicand by way of annual interest. In ascertaining this, regard should also be had to the fact that ultimately the capital sum should also be consumed-up over the period for which the dependency is expected to last."

Simply the boy was unmarried, that in itself would not mean that unmarried boy would have spent 2/3rd of his income towards his personal expenses. The Supreme Court in the **Fakeerappa v. Karnataka Cement Pipe Factory, (***2004) 2 SCC 473* has observed as under:-

> **"7.** What would be the percentage of deduction for personal expenditure cannot be governed by any rigid rule or formula of universal application. It would depend upon circumstances of each case. The deceased undisputedly was a bachelor. Stand of the

> insurer is that after marriage, the contribution to the parents would have been lesser and, therefore, taking an overall view the Tribunal and the High Court were justified in fixing the deduction.
> **8.** It has to be noted that the ages of the parents as disclosed in the claim petition were totally unbelievable. If the deceased was aged about 27 years as found at the time of post-mortem and about which there is no dispute, the father and mother could not have been aged 38 years and 35 years respectively as claimed by them in the claim petition. Be that as it may, taking into account special features of the case we feel it would be appropriate to restrict the deduction for personal expenses to one-third of the monthly income. Though the multiplier adopted appears to be slightly on the higher side, the plea taken by the insurer cannot be accepted, as there was no challenge by the insurer to the fixation of the multiplier before the High Court and even in the appeal filed by the appellants before the High Court, the plea was not taken."

The Tribunal has rightly taken into account, 1/3rd personal expenses out of the said income of the deceased and /3rd towards the dependants. Even towards funeral expenses, the award is not on the higher side.

I find no merit in the present appeal. Dismissed.

KAILASH GAMBHIR, J.

November 28, 2007
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